

## REMARKS

The Examiner's action of January 8, 2008, is noted in which the claims remain rejected under a combination of the Schoenberg and Zack references. Applicant has provided a Rule 131 Affidavit swearing behind these references and asks that these references be removed and the case be allowed.

The Examiner asserts that there is no proper showing of diligence with monthly evidence and that the Patent Office has rejected diligence based on a two-day lapse in a showing. The Examiner cites the Mulder case to support his rejection.

The Examiner misinterprets this case.

The Examiner has cited the Mulder case (copy enclosed) for the proposition that a two-day period without a showing of diligence fails to supply the Rule 131 requirement for diligence.

The Examiner is invited to read the Mulder case in its entirety and more particularly to consider the facts as they are set forth at 716 F.2d 1542.

What is eminently clear is that Mulder was asserting that they needed to show no diligence in a case where there were only two days between an effective date and a filing date. Mulder stands for the proposition that one must show diligence, and Applicant agrees. The present case is distinguished from Mulder because Applicant has supplied evidence of diligence.

From the Mulder case the Court said:

"Applicant's difficulty, as they had to admit, is that there is no evidence whatever of a record showing diligence ..." (emphasis supplied)

To the contrary, the case here is replete with evidence showing diligence in the time period involved. Applicant does not argue he needs to show no diligence (as Mulder did).

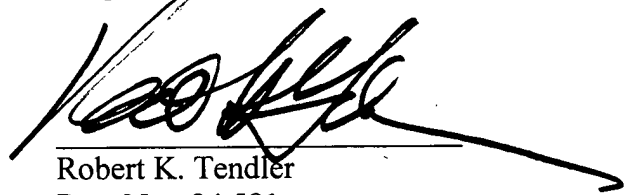
The Examiner cannot just take a head note from a case or the short one-liner in the MPEP and apply it to the present case. The Court in Mulder said that one must have some showing of diligence. We agree, and in the present case there is ample evidence of diligence.

Applicant here is not claiming that he need not show diligence, but that he has, in fact, shown diligence. Further, there is absolutely no evidence in the case to suggest that he abandoned, suppressed or concealed anything.

Moreover, there need be no excuse for a lack of showing of diligence. There is no lack of showing in this case as there is ample evidence of diligence. Therefore, no excuse is necessary.

Removal of the Schoenberg and Zack references is requested and allowance of the claims is solicited.

Respectfully submitted,



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